

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 2<sup>nd</sup> day of August, two thousand and six.

PRESENT:

HON. BARRINGTON D. PARKER,  
HON. REENA RAGGI,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

Xian Xin Xia, \_\_\_\_\_  
\_\_\_\_\_*Petitioner,*

-v.-

No. 05-5175-ag  
NAC

United States Department of Justice,  
Alberto R. Gonzales, Attorney General,

*Respondents.*

FOR PETITIONER: David X. Feng, New York, New York.

FOR RESPONDENT: Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, Christy Criswell Wiegand, Assistant United States Attorney, Pittsburgh, Pennsylvania.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED, in part, and DISMISSED, in part.

2 Xian Xin Xia petitions for review of the BIA's denial of his motion to reopen his removal  
3 proceedings. We presume the parties' familiarity with the underlying facts and procedural  
4 history of the case.

5 This Court reviews the BIA's denial of a motion to reopen or reconsider for abuse of  
6 discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam). A motion to reopen  
7 must be filed with the BIA within ninety days of the final administrative decision, unless it is  
8 based on a change in country conditions under 8 C.F.R. §§ 1003.2(c)(2), 1003.2(c)(3)(ii). Here  
9 Xia has alleged no change in country conditions. Instead, he simply reiterates the facts in his  
10 affidavit filed with the underlying motion. Therefore, the BIA did not abuse its discretion in  
11 finding that Xia did not qualify for the regulatory exception to the filing deadline and in denying  
12 Xia's motion to reopen as untimely. *See* 8 C.F.R. § 1003.2(c)(3)(ii).

13 To the extent that Xia requests this Court to review the BIA's decision not to reopen his  
14 proceedings *sua sponte*, this Court lacks jurisdiction to review that decision. *Ali v. Gonzales*,  
15 448 F.3d 515, 518 (2d Cir. 2006). For the foregoing reasons, the petition for review is DENIED,  
16 in part, and DISMISSED, in part. Having completed our review, any stay of removal that the  
17 Court previously granted in this petition is VACATED, and any pending motion for a stay of  
18 removal in this petition is DENIED as moot. Any pending request for oral argument in this  
19 petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and  
20 Second Circuit Local Rule 34(d)(1).

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23 FOR THE COURT:  
24 Roseann B. MacKechnie, Clerk

25  
26 By: \_\_\_\_\_  
27 Oliva M. George, Deputy Clerk